In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1206

LEONARD VAUGHT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of California, petitioner was convicted of smuggling 23,000 amphetamine tablets into the United States, in violation of 18 U.S.C. 545, and of conspiracy to commit that offense, in violation of 18 U.S.C. 371. He was sentenced to concurrent prison terms of 18 months on each count and a noncumulative fine of $1,000. The court of appeals affirmed *per curiam* (Pet. App. A).

Petitioner contends that the requirement in 18 U.S.C. 545 that goods be invoiced before their entry into the United States violated his privilege against compulsory self-incrimination. As observed by the court below, this precise claim was advanced and rejected in *United States* v. *Perez*, 426 F. 2d 799 (C.A. 9), certiorari denied, October 12, 1970 (No. 5307, this Term). As the court of appeals pointed out in *Perez*, Section 545 is a general tariff and customs provision that is primarily a revenue measure and is not directed against a class inherently suspect of criminal activities. In these circumstances, the court of appeals properly ruled that the rationale of *Leary* v. *United States*, 395 U.S. 6, has no application. See also *United States* v. *Boggus*, 411 F. 2d 110, 113 (C.A. 9), certiorari denied, 396 U.S. 919, involving a similar unsuccessful challenge to a conviction for smuggling gold under 18 U.S.C. 545.

Petitioner also contends that it constituted cruel and unusual punishment to convict him for both the conspiracy and substantive offenses. The law in the federal courts is settled to the contrary. *Callanan* v. *United States*, 364 U.S. 587; *Pereira* v. *United States*, 347 U.S. 1, 11. At all events, although *Benton* v. *Maryland*, 395 U.S. 784, declined to recognize the concurrent sentence doctrine as a jurisdictional rule, the rule survives as a matter of judicial convenience where prejudice does not patently appear and collateral legal consequences are remote. *Kauffmann* v. *United States*, 414 F. 2d 1022 (C.A. 8), certiorari denied *sub nom. Chubet* v. *United States*, 397 U.S. 962. The alternative ruling of the court below that

the doctrine has proper application here to the concurrent conspiracy sentence was therefore correct.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

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